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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 128

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH
INFORMATION NETWORK CHAPTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter I, Chapter 103, Title 16 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 Subchapter I. Purpose, ~~Power and Duties, and Powers, and Duties;~~ other Governing Provisions of the Delaware
4 Health Information Network.

5 Section 2. Amend § 10301, Title 16 of the Delaware Code by making deletions as shown by strike through and
6 insertions as shown by underline as follows:

7 § 10301. Purpose.

8 (a) The purpose of this chapter is to create ~~a public instrumentality of this State known as the Delaware Health~~
9 Information Network (“DHIN”) which is Network, a not-for-profit body both politic and corporate, ~~which shall have to~~
10 serve as a public instrumentality that has the rights right, obligations obligation, privileges privilege, and purpose to
11 promote the design, implementation, operation, and maintenance of facilities for public and private use of health care
12 information in the State. ~~The DHIN shall be~~ is the State’s sanctioned provider of health information exchange services.

13 (b) ~~It is intended that the DHIN be~~ is a public-private partnership for the benefit of all of the citizens of this State.

14 (c) ~~The DHIN shall ensure the privacy of patient health-care information.~~

15 Section 3. Amend § 10302, Title 16 of the Delaware Code by making deletions as shown by strike through and
16 insertions as shown by underline as follows:

17 § 10302. ~~Creation of Delaware Health Information Network~~ Board of Directors.

18 (a) ~~There is hereby established the Delaware Health Information Network which will be managed and operated by~~
19 ~~a Board of Directors consisting of~~ A Board of Directors manages and operates DHIN. ~~19 members. It is intended that the~~
20 ~~membership of the Board~~ membership must include individuals with various business, ~~technology~~ technology, and
21 healthcare industry skills who are committed to managing ~~the Corporation~~ DHIN in an efficient, ~~effective~~ effective, and
22 competitive manner. ~~The Board shall be comprised of the following members~~ Board membership is comprised as follows:

- (1) The Director of the Office of Management and Budget or the Director's ~~designee~~; designee.
- (2) The Chief Information Officer of the Department of Technology and Information or the Chief Information Officer's ~~designee~~; designee.
- (3) The Secretary of the Department of Health and Social Services or the Secretary's ~~designee~~; designee.
- (4) The Controller General or the Controller General's ~~designee~~; designee.
- (5) Fifteen members are appointed by the Governor. The Board, Delaware Healthcare Association, Medical Society of Delaware, Delaware State Chamber of Commerce, and other interested organizations may make nonbinding recommendations to the Governor for appointments to the Board. The Governor's appointments are as follows:
- a. ~~Six members, appointed by the Governor, general members, including at least 1 person who shall represent individual who represents the interests of medical consumers and at least 3 with experience and/or individuals who have experience or expertise in the health-care industry; industry.~~
- (6) b. Three members appointed by the Governor representing hospitals or health systems; who represent a hospital or health system.
- (7) c. Three members appointed by the Governor representing physicians; who represent physicians.
- (8) d. One member appointed by the Governor representing businesses or employers; and who represents a business or employer.
- (9) e. Two members appointed by the Governor representing health insurers or health plans who represent a health insurer or health plan.
- (6)a. ~~The Chair of the Board shall be elected from among its members by a majority of the Directors and Board members shall elect the Board chair from among its members. The chair shall serve serves as chair for a 3-year term.~~
- b. ~~Each member shall serve serves a 3-year term, with such initial terms being staggered as set by the Governor and each member continuing to serve beyond such the term until a successor is appointed.~~
- c. ~~Any member absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, may be removed from the Board with the approval of the Governor upon a recommendation from the Board. The Board, the Delaware Healthcare Association, the Medical Society of Delaware, Delaware State Chamber of Commerce, and other interested organizations may make nonbinding recommendations to the Governor for appointments to the Board. The Governor may suspend or remove a member upon the recommendation from the Board or for misfeasance, malfeasance, nonfeasance, or neglect of duty. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Board~~

meetings or attends less than 50% of Board meetings in a calendar year. The Governor may consider the member to have resigned and accept the member's resignation.

(b) ~~No~~ A state officer or employee appointed to the Board or serving in any other capacity for the Board ~~shall be~~ is not deemed to have resigned from public office or employment by reason of ~~such~~ the appointment to or service for the Board. ~~Members of the Board who are serving on January 1, 2011, shall continue to serve until a successor is appointed by the Governor or otherwise designated by the ex-officio members.~~

(c) ~~The Board is authorized to conduct its business by a majority of a quorum. A quorum is a simple majority of the members appointed.~~ The number of members needed to be present at a Board meeting to have a quorum and conduct official business is a majority of members. Counting for quorum does not include member positions that are vacant.

Section 4. Amend § 10303, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10303. Powers and duties.

(a) ~~In furtherance of the purposes of this chapter, the DHIN shall have the following powers and duties DHIN has the power and duty to do all of the following:~~

(1) Develop and maintain a community-based health information network to facilitate communication of patient clinical and financial information, designed to do all of the following:

a. Promote more efficient and effective communication among multiple health care providers, ~~including, but not limited to,~~ including hospitals, physicians, payers, employers, pharmacies, ~~laboratories~~ laboratories, and other health care ~~entities;~~ entities.

b. Create efficiencies in health-care costs by eliminating redundancy in data capture and storage and reducing administrative, ~~billing~~ billing, and data collection ~~costs;~~ costs.

c. Create the ability to monitor community health ~~status;~~ and status.

d. Provide reliable information to health-care consumers and purchasers regarding the quality and cost-effectiveness of health care, health ~~plans~~ plans, and health-care ~~providers;~~ providers.

(2) Develop or design other initiatives in furtherance of ~~its purpose;~~ DHIN's purpose.

(3) Report and make recommendations to the Governor and General ~~Assembly;~~ Assembly.

(4) Adopt bylaws to govern all of the following:

a. ~~the~~ The conduct of ~~its affairs~~ DHIN's affairs.

b. ~~and to carry~~ The carrying out and discharge ~~its~~ of DHIN's powers, ~~duties~~ duties, and functions functions.

83 ~~c. and to adopt~~ Adopt policies as appropriate to carry out and discharge its DHIN's powers, duties, and
84 ~~functions; functions; and to sue, but not be sued; sued; to enter into contracts and agreements agreements; and to~~
85 plan, control facilities and ~~such~~ DHIN's real and personal property as it DHIN may deem necessary, ~~convenient~~
86 convenient, or desirable without ~~applications of the provisions of Chapter application of Chapters~~ 59, 69, or 70 of
87 ~~Title 29; Title 29.~~

88 (5) All prior regulations and rules promulgated by the Delaware Health Care Commission regarding ~~the~~ DHIN
89 ~~shall remain in full force and effect until the DHIN replaces the aforementioned regulations and rules with bylaws~~
90 ~~and/or policies; or policies.~~

91 (6) ~~The bylaws shall include a~~ A provision pertaining to conflicts of interest and that Board members, staff,
92 committee members members, and others conducting business or associated with ~~the~~ DHIN ~~shall be~~ are required to
93 sign conflict of interest ~~statements; statements.~~

94 (7) To have and exercise ~~any and~~ all powers available to a corporation organized ~~pursuant to~~ under Chapter 1
95 of Title 8, the Delaware General Corporation ~~Law; Law.~~

96 (8) To employ ~~such~~ personnel and provide ~~such~~ benefits as necessary to carry out its DHIN's functions and to
97 retain by contract engineers, advisors, and other providers of advice, ~~counsel~~ counsel, and services which it deems
98 advisable or necessary in the exercise of its DHIN's purposes and powers and upon ~~such~~ the terms as it DHIN deems
99 ~~appropriate; appropriate.~~

100 (9) To exercise ~~all of the~~ power and the authority ~~with respect to the~~ regarding DHIN's operation,
101 ~~development and maintenance of the DHIN; development, and maintenance.~~

102 (10) To do all acts and things necessary or convenient to carry out its DHIN's functions, including ~~without~~
103 ~~limitation, having~~ the authority to open and operate separate bank accounts in ~~the name of the DHIN; DHIN's name.~~

104 (11) To collect, receive, ~~hold~~ hold, and disburse funds ~~in accordance with the needs of the DHIN; related to~~
105 DHIN's operations, including user fees ~~set by the DHIN; that DHIN sets.~~

106 (12) Implement and operate a statewide integrated health information network to enable communication of
107 ~~clinical and financial health information, and other information~~ clinical health, financial health, and other information,
108 and other related functions ~~as deemed necessary by the Board; that the Board deems necessary.~~

109 (13) Promote efficient and effective communication among Delaware healthcare providers and stakeholders
110 including hospitals, physicians, state agencies, payers, employers, and ~~laboratories; laboratories.~~

111 (14) Promote efficiencies in the healthcare delivery ~~system; system.~~

112 (15) Provide a reliable health information exchange to authorized ~~users; users.~~

(16) Work with governments ~~and or~~ other states to integrate into or with the DHIN ~~and/or or~~ assist ~~them~~ governments or other states in providing regional integrated health information ~~systems; systems.~~

(17) Work towards improving the quality of health care and the ability to monitor community health status and facilitate health promotions by providing immediate and current outcome, ~~treatment~~ treatment, and cost data and related information so that patients, ~~providers~~ providers, and payers can make informed and timely decisions about health ~~care; care.~~

(18) ~~Make annual reports~~ Submit an annual report to the Governor and ~~members of~~ the General Assembly setting forth in detail its DHIN's operations and transactions, ~~which shall include~~ including an annual ~~audits of the~~ audit of DHIN's financial books and ~~accounts of the DHIN made~~ accounts, to be conducted by a firm of independent certified public accountants ~~mutually agreed to by that~~ the Auditor of Accounts and the Director of the Office of Management and ~~Budget; Budget agree upon.~~

(19) Develop and maintain a process to enable a hospital to record in the patient's electronic health record contained in ~~the~~ DHIN the patient's designation of a lay caregiver and the lay caregiver's contact information, as required by § 3002J(b) of this title, and if the hospital attempted to or did interface with the lay caregiver, as required by § 3004J(b) of this ~~title; title.~~

(20) Develop, maintain, and administer the Delaware Health Care Claims Database under ~~subchapter~~ Subchapter II of this chapter; and chapter.

(21) Perform any and all other activities in furtherance of this section.

(b) To carry out the ~~above~~ duties listed in this section, ~~the~~ DHIN is granted all incidental powers, without limitation, including the powers to do all of the following:

(1) ~~To contract~~ Contract with sufficient third parties ~~and/or or~~ employ nonstate employees, without applications of the provisions of Chapter 59, 69, or 70 of Title 29 ~~respectively; respectively.~~

(2) ~~To establish~~ Establish a nonappropriated special funds account in its DHIN's budget ~~in order~~ to receive gifts and ~~donations; donations.~~

(3) ~~To establish~~ Establish reasonable fees or charges for provision of its DHIN's services to nonparticipant third ~~parties; and parties.~~

(4) ~~To sell~~ Sell or license ~~any~~ copyrighted or patented intellectual property.

Section 5. Amend § 10304, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10304. Immunity from suit; limitation of liability.

(a) ~~All members of the Board of Directors of the DHIN, whether temporary or permanent, shall not be subject to and shall be immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other state law, or duly adopted rules and regulations of the DHIN, good faith being presumed until proven otherwise, with malice required to be shown by a complainant. All employees and staff of the DHIN, whether temporary or permanent, shall enjoy the same rights and privileges concerning immunity from suit otherwise enjoyed by state employees pursuant to the Constitution of this State and §§ 4001 through 4005 of Title 10. (1) A Board member, whether temporary or permanent, is not subject to and is immune from claim suit, liability, damages, or other recourse, whether civil or criminal, arising from the member's act, proceeding, decision, or determination performed or reached in good faith and without malice in carrying out the responsibility, authority, duty, power, or privilege of DHIN.~~

(2) Immunity under this subsection applies to a member acting individually or jointly with another member.

(3) Good faith is presumed under this subsection until proven otherwise. The burden to prove malice is on the complainant.

(4) The immunity from suit provided to state employees under the Delaware Constitution and §§ 4001 through 4005 of Title 10 applies to a DHIN employee or staff member, whether temporary or permanent.

(b) ~~The DHIN is not a health-care provider and is not subject to claims under Chapter 68 of Title 18. No A person or entity who participates in or subscribes to the services or information provided by the DHIN shall be that DHIN provides is not liable in any an action for damages or costs of any nature, in law or equity, which result solely from that person's use or failure to use DHIN information or data that was imputed or retrieved in accordance with the under DHIN's rules or regulations of the DHIN. In addition, no person shall be regulations. A person may not be subject to antitrust or unfair competition liability based on membership or participation in the DHIN as the State's sanctioned provider of health information services that are deemed to be essential to governmental function for the public health and safety.~~

Section 6. Amend § 10305, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10305. Property rights.

(a) ~~All persons~~ A person providing information ~~and or~~ and data to the DHIN ~~shall retain~~ retains a property right in that information or data, but ~~grant the provision of information or data grants~~ grants to the other ~~participants or subscribers~~ participant

172 or subscriber a nonexclusive license to retrieve and use that information or data in accordance with the rules or regulation
173 promulgated by the that DHIN promulgates.

174 (b) ~~All processes~~ Processes or software ~~developed, designed, or purchased by the DHIN shall remain its~~ that DHIN
175 develops, designs, or purchases remains DHIN's property subject to use by participants or subscribers in accordance with a
176 participant or subscriber under the rules or regulations promulgated by the that DHIN promulgates.

177 Section 7. Amend § 10306, Title 16 of the Delaware Code by making deletions as shown by strike through and
178 insertions as shown by underline as follows:

179 § 10306. Regulations; resolution of disputes.

180 (a) ~~The DHIN may promulgate rules and regulations under subchapter~~ Subchapter II of Chapter 101 of Title 29 to
181 carry out the objective of this chapter. All prior regulations and rules promulgated by the Delaware Health Care
182 Commission in regards to the DHIN shall Regulations and rules that the Delaware Health Care Commission promulgated
183 prior to July 12, 2010, regarding DHIN remain in full force and effect until amended or repealed by the through DHIN.

184 (b) ~~To DHIN may hear and determine a case decision under Subchapter III of Chapter 101 of Title 29 to resolve~~
185 disputes a dispute among participants, subscribers, or the public under this chapter, or the rules and regulations a rule or
186 regulation promulgated under this chapter, among participants, subscribers, or the public, the DHIN may hear and
187 determine case decisions under subchapter Subchapter III of Chapter 101 of Title 29. chapter.

188 (c) ~~Any A person may appeal to the Superior Court under Subchapter V of Chapter 101 of Title 29 for any of the~~
189 following:

190 (1) If the person has been aggrieved by the unlawfulness of any a rule or regulation of the DHIN herein, under
191 this chapter.

192 ~~or any person against whom a case decision has been decided, may appeal to the Superior Court in accordance~~
193 ~~with subchapter V of Chapter 101 of Title 29.~~ (2) If a case decision under this chapter has been decided against the
194 person.

195 Section 8. Amend § 10307, Title 16 of the Delaware Code by making deletions as shown by strike through and
196 insertions as shown by underline as follows:

197 § 10307. Privacy; protection of information.

198 (a) ~~The DHIN shall by rule or regulation ensure that patient specific health information be is disclosed only in~~
199 accordance with the patient's consent or best interest to those having a need to know.

~~(b) The health information and data of the DHIN shall not be subject to the Freedom of Information Act, Chapter 100 of Title 29, nor to subpoena by any court. Such information may only be disclosed by consent of the patient or in accordance with the DHIN's rules, regulations or orders.~~

(b) Health information and data held by DHIN is not subject to the Freedom of Information Act, Chapter 100 of Title 29, or subpoena by a court. The health information and data may be disclosed only by consent of the patient or under DHIN's rules, regulations, or orders.

(c) ~~Any A~~ violation of the DHIN's rules or regulations regarding access or misuse of ~~the DHIN health information or data shall~~ health and information data held by DHIN must be reported to the office of the Attorney General, and is subject to prosecution and penalties under the Delaware Criminal Code or federal law.

Section 9. Amend § 10308, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10308. No pledge of state credit; no assumption of liability by State.

~~The DHIN shall have no~~ DHIN does not have the power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the ~~State or of any other agency or of any State, a state agency, or a political subdivision of the State, and the State.~~ The State shall not assume or be deemed to have assumed any debt or liability of ~~the~~ DHIN as a result of any actions by ~~the~~ DHIN.

Section 10. Amend § 10311, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10311. The Delaware Health Care Claims Database — Findings; purpose; creation.

(a) The General Assembly finds that:

(1) The establishment of effective health-care data analysis and reporting initiatives is essential to achieving the "Triple Aim" of the State's ongoing health-care innovation efforts: improved health, health-care quality and experience, and affordability for all Delawareans.

(2) The ongoing work of the Delaware Center for Health Innovation to transform the State's health-care system from a fee-for-service system to a value-based system that rewards health-care providers for quality and efficiency of care is a worthy effort, and, to that end, the General Assembly supports the establishment of a health-care claims database ~~that would~~ to assist in the State's efforts to achieve the Triple Aim.

(3) Claims data is an important component of population health research and analysis, and that appropriate access to claims data can facilitate the development of value-based health-care purchasing and the study of the

prevalence of illness or injury across the broader population of Delaware and in particular communities or neighborhoods.

(4) Providers and other health-care entities accepting financial risk for managing the health-care needs of a population, including the State as a self-insured employer, should have access to claims data as necessary to effectively manage that risk.

(b) The purpose of this subchapter is to create a centralized health-care claims database to enable the State to more effectively understand utilization across the continuum of health care in Delaware and achieve the Triple Aim.

(c) ~~The~~ DHIN, assisted by the Department of Health and Social Services and the Delaware Health Care Commission as necessary, shall administer a centralized health-care claims database, known as the “Delaware Health Care Claims Database.”

(d) The Delaware Health Care Claims Database is created within ~~the~~ DHIN to facilitate data-driven, evidence-based improvements in access, quality, and cost of health care and to promote and improve the public health through increased transparency of accurate health-care claims data and information. ~~The~~ DHIN shall collect and maintain claims data under this subchapter.

Section 11. Amend § 10312, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10312. Definitions.

~~For purposes of~~ As used in this chapter, unless amended, supplemented, or otherwise modified by regulations adopted under this chapter:

(1) “Board” means the Delaware Health Information Network Board of Directors.

(1) “Claims data” includes required claims data and ~~any~~ additional health-care claims information that a voluntary reporting entity ~~elects~~, may elect, through entry into an appropriate data submission and use agreement under this subchapter, to submit to the Delaware Health Care Claims Database.

(2) “DHIN” means the Delaware Health Information Network.

(2) “Health-care services” means as defined in § 6403 of Title 18.

(3) “Health insurer” means as defined in § 4004 of Title 18. ~~“Health insurer” does not include providers of casualty insurance, as defined in § 906 of Title 18; providers of group long-term care insurance or long-term care insurance, as defined in § 7103 of Title 18; or providers of a dental plan or dental plan organization, as defined in § 3802 of Title 18.~~ “Health insurer” does not include a provider of any of the following:

a. Casualty insurance, as “casualty insurance” is defined under § 906 of Title 18.

b. Group long-term care insurance, as “group long-term care insurance” is defined in § 7103 of Title 18.

c. A dental plan, as “dental plan” is defined under § 3802 of Title 18.

d. A dental plan organization, as “dental plan organization” defined under § 3802 of Title 18.

(4) “Mandatory reporting entity” means ~~all~~ each of the following entities, to the extent permitted under federal law:

a. 1. The State Employee Benefits Committee and the Office of Management and Budget, under each entity’s respective statutory authority to administer the State Group Health Insurance Program in Chapter 96 of Title 29, 29.

~~and any 2. A health insurer, third-party administrator, or other entity that receives or collects charges, contributions, or premiums for, or adjusts or settles health claims for, any State employee, or their spouses or dependents; a State employee, or a spouse or dependent of a State employee, participating in the State Group Health Insurance Program, except for any carrier, Program. However, a carrier, as defined in § 5290 of Title 29, selected by that the State Group Health Insurance Plan Program has selected to offer supplemental insurance program coverage under Chapter 52C of Title 29 is not included in the definition of “mandatory reporting entity”.~~

b. The Division of Medicaid and Medical Assistance, with respect to services provided under programs administered under Titles XIX and XXI of the Social Security Act [42 U.S.C. §§ 1396 et seq. and 1397aa et seq.].

c. ~~Any~~ A health insurer or other entity that is certified as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or ~~any~~ a subsequent plan year, ~~except for any year. However, a health insurer or other entity that is not otherwise required to provide claims data as a condition of certification as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or any a subsequent plan year is not included in the definition of “mandatory reporting entity”.~~

d. ~~Any~~ A federal health insurance plan providing health-care services to a resident of this State, including Medicare and the Federal Employees Health Benefits Plan.

e. ~~Any~~ A health insurer providing health-care coverage to a resident of this State.

(5) “Pricing information” includes all of the following:

~~the a. The preadjudicated price charged by that a provider or facility charges to a reporting entity for health-care services; services.~~

~~the amount paid by b. The amount a patient or insured party individual pays, including copays and deductibles; deductibles.~~

289 ~~and the c.~~ The postadjudicated price paid by that a reporting entity pays to a provider for health-care
290 services.

291 (6) "Provider" means a hospital or ~~any~~ health-care practitioner that is licensed, certified, or authorized under
292 state law to provide health-care ~~services and~~ services. "Provider" includes a hospital or health-care practitioner
293 participating in a group arrangements, arrangement, including an accountable care ~~organizations, organization~~, in
294 which the hospital or health-care ~~practitioners agree~~ practitioner agrees to assume responsibility for the quality and cost
295 of health care for a designed group of beneficiaries.

296 (7) "Reporting date" means a calendar ~~deadline, to be~~ deadline that is scheduled on a regularly recurring basis,
297 by which a mandatory reporting entity must submit required claims data ~~must be submitted by a mandatory reporting~~
298 ~~entity~~ to the Delaware Health Care Claims Database.

299 (8) "Required claims data" includes the basic claims information that a mandatory reporting entity ~~is required~~
300 ~~to~~ must submit to the Delaware Health Care Claims Database by the reporting date, including all of the following:

301 a. Basic demographic information, including the patient's gender, age, and geographic area of residency.

302 b. Basic information relating to an individual service, encounter, visit, or episode of care, including all of
303 the following:

304 ~~the~~ 1. The date and time of ~~the~~ a patient's admission and ~~discharge; discharge.~~

305 ~~the~~ 2. The identity of the health-care services ~~provider; provider.~~

306 ~~and the~~ 3. The location and type of facility, such as a hospital, office, or clinic, where the ~~servicee~~
307 service, encounter, visit, or episode of care was provided.

308 c. Information describing the nature of health-care services provided to the patient in connection with the
309 ~~encounter, visit, or~~ service, encounter, visit, or episode of care, including diagnosis codes.

310 d. Health insurance product type, such as HMO or PPO.

311 e. Pricing information.

312 (9) "Third-party administrator" means as defined in § 102 of Title 18.

313 (10) "Voluntary reporting entity" includes, except as prohibited under applicable federal law, any of the
314 following entities, unless ~~such~~ the entity is a mandatory reporting entity:

315 a. ~~Any~~ A health insurer.

316 b. ~~Any~~ A third-party administrator.

317 c. ~~Any entity, which~~ An entity that is not a health insurer or third-party administrator, ~~when such~~ if the
318 entity receives or collects charges, contributions, or premiums for, or adjusts or settles health-care claims for,
319 residents of this State.

320 Section 12. Amend § 10313, Title 16 of the Delaware Code by making deletions as shown by strike through and
321 insertions as shown by underline as follows:

322 § 10313. Submission of required claims data by mandatory reporting entities; submission of claims data by
323 voluntary reporting entities.

324 (a) Requirements for submission of required claims data by a mandatory reporting entity.

325 (1) A mandatory reporting entity shall submit required claims data to the Delaware Health Care Claims
326 Database by the reporting date.

327 (2) ~~The DHIN,~~ DHIN is subject to the provisions of this subchapter and regulations promulgated under this
328 subchapter, and shall collect the required claims data from mandatory reporting entities by the reporting date.

329 (3) ~~The DHIN shall, under § 10306 of this title, promulgate a template form for a data submission and use~~
330 ~~agreement for the submission of required claims data by a mandatory reporting entity~~ to use to submit required claims
331 data.

332 (4) ~~The DHIN and each mandatory reporting entity shall~~ must execute a mutually acceptable data submission
333 and use agreement. ~~Such~~ The agreement ~~shall~~ must include procedures for submission, collection, aggregation, and
334 distribution of claims data and ~~shall~~ must provide for, at a minimum, all of the following:

335 a. The protection of patient privacy and data security under ~~provisions of~~ this chapter and state and
336 federal privacy laws, including all of the following:

337 ~~the federal~~ 1. The Health Insurance Portability and Accountability Act [P.L. 104-191]; [P.L. 104-
338 191].

339 2. Titles XIX and XXI of the Social Security Act [42 U.S.C. §§ 1396 et seq. and 1397aa et seq.]; and
340 1397aa et seq.].

341 ~~and the~~ 3. The Health Information Technology for Economic and Clinical Health (HITECH) Act [42
342 U.S.C. §§ 300jj et seq. and 17901 et seq.], and 17901 et seq.].

343 ~~and all~~ 4. All other applicable state and federal laws relating to the privacy and security of protected
344 health information.

b. The identification of ~~any claims data, in addition to required claims data,~~ data that the mandatory reporting entity elects to submit to the Delaware Health Care Claims Database in addition to the required claims data.

c. A detailed summary of how claims data ~~submitted by~~ that the mandatory reporting entity submits may be used for geographic, demographic, economic, and peer group comparisons.

d. A representation and warranty that ~~the~~ DHIN shall, ~~abide~~ to the fullest extent possible, abide by nationally recognized data collection standards and methods, including the standards promulgated by the APCD Council or successor organization, to establish and maintain the database in a cost-effective manner and ~~to~~ facilitate uniformity among various health-care claims databases of other states and specification of data fields ~~to~~ be included in the submitted claims, ~~consistent with such national standards, allowing for exemptions~~ claims. DHIN may allow for an exemption when ~~submitting entities do~~ a submitting entity does not collect the specified data or pay on a per-claim basis.

(5) Exclusions from required claims data reporting requirement. The required claims data reporting requirements under this subchapter, and ~~any~~ rules and regulations promulgated under this chapter, do not apply to required claims data created for ~~any~~ an employee welfare benefit plan or other employee health plan that is regulated by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U.S.C. § 1001 et seq., unless otherwise permitted by federal law or regulation.

(b) Submission of claims data by a voluntary reporting entity.

(1) ~~The~~ DHIN shall collect claims data from a voluntary reporting ~~entities~~ entity under the terms and conditions of the applicable data submission and use agreement.

(2) ~~The~~ DHIN may promulgate regulations to clarify the types of claims data that ~~may be submitted by~~ a voluntary reporting entity may submit.

(3) ~~The~~ DHIN and ~~any~~ a voluntary reporting entity that elects to submit claims data to the Delaware Health Care Claims Database shall execute a mutually acceptable data submission and use agreement. ~~The~~ DHIN shall publish a template form data submission and use agreement that includes the required data submission and use agreement provisions under paragraph (a)(4) of this section.

(c) Unless modified or supplemented by regulations promulgated under this chapter, ~~in instances where~~ if more than 1 entity is involved in the administration of a policy, a ~~the~~ health insurer ~~shall be~~ is responsible for submitting the claims data on policies that it has written, and the third-party administrator ~~shall be~~ is responsible for submitting claims data on self-insured plans that it administers.

Section 13. Amend § 10314, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10314. External and public reporting of claims data.

(a) ~~The~~ DHIN shall provide Delaware health-care payers, providers, and purchasers with access to the Delaware Health Care Claims Database for the purpose of facilitating the design and evaluation of alternative delivery and payment models, including population health research and provider risk-sharing arrangements.

(1) Claims data provided to the Delaware Health Care Claims Database ~~shall only~~ may be provided to a requesting ~~party~~ person only when a majority of the DHIN Board of Directors, or of a subcommittee established under the DHIN's bylaws for purposes of administering the Health Care Claims Database, determines that the claims data should be provided to the requesting ~~party~~ person to facilitate the purposes of this subchapter or to the Delaware Health Care Commission.

a. ~~The~~ A written determination under this paragraph (a)(1) ~~shall be reduced to writing and~~ must be provided to the requesting ~~party~~ person.

b. ~~The~~ A determination under this paragraph (a)(1) ~~shall be~~ is final and not subject to appeal, ~~and there is~~ no appeal. A requesting person does not have a private right of action to a requesting party against the DHIN or any other party another person to enforce the requirements of this section.

(2) ~~The~~ DHIN shall, in consultation with the Delaware Health Care Commission, promulgate rules and regulations regarding the appropriate form and content of an application to receive claims data, providing examples of requests for claims data that will generally be deemed consistent with the purposes of this subchapter.

(b) Claims data provided to a requesting ~~party~~ person under this section ~~shall~~ must be provided under the DHIN's existing confidentiality and data security protocols and in compliance with all applicable state and federal laws relating to the privacy and security of protected health information, including compliance, to the fullest extent practicable consistent with the purposes under this subchapter, with guidance found in Statement 6 of the Department of Justice and Federal Trade Commission Enforcement Policy regarding the exchange of price and cost information. ~~Individually identifiable~~ A provider or purchaser must maintain individually identifiable patient health information ~~shall be maintained by providers and purchasers in accordance with~~ under all applicable state and federal laws relating to the confidentiality and security of protected health ~~information and any additional information, including privacy and security requirements set forth in~~ under regulations promulgated under this chapter.

(c)(1) ~~The~~ For the purposes of public health improvement research and activities, DHIN shall provide access, at no cost, to all claims data reported by the Delaware Health Care Claims Database under this subchapter to the following state agencies ~~for the purposes of public health improvement research and activities:~~

- a. Office of Management and Budget.
- b. State Employee Benefits Committee.
- c. Division of Public Health.
- d. State Council for Persons with Disabilities.
- e. Division of Medicaid and Medical Assistance.
- f. Department of Insurance.
- g. Delaware Health Care Commission.

(2) ~~The state agencies~~ A state agency under paragraph (c)(1) of this section may enter into an appropriate ~~agreements~~ agreement with the DHIN to allow the DHIN to perform data warehousing and analytics functions that ~~have been performed by, or on behalf of, these state agencies~~ the state agency, or an entity on behalf of the state agency, has performed under ~~their existing statutory~~ the state agency's authority.

(d) ~~The~~ DHIN may promulgate regulations to make available to the public certain ~~nonindividually identifiable~~ data extracts and analyses that is not individually identifiable, as ~~the~~ DHIN determines is consistent with, and necessary to, achieve the goals and policies of this subchapter. ~~Prior to the release of such~~ Before the data extracts and analyses, the ~~same~~ processes identified in process under subsection (e) of this section ~~shall~~ must be completed.

(e) ~~The~~ DHIN shall promulgate regulations to notify a mandatory reporting entity or voluntary reporting entity when claims data ~~submitted by that~~ the mandatory reporting entity or voluntary reporting entity submitted may be released for a purpose permitted under this ~~subchapter and~~ subchapter. DHIN shall provide the mandatory reporting entity or voluntary reporting entity with an opportunity to comment on the data release request prior to its release. Any comments received from a mandatory reporting entity or voluntary reporting entity submits during the comment ~~period prior to the~~ data release period.

(e) ~~The~~ (1) DHIN shall promulgate regulations to notify a mandatory reporting entity or voluntary reporting entity when claims data ~~submitted by that~~ the mandatory reporting entity or voluntary reporting entity submitted may be released for a purpose permitted under this ~~subchapter and~~ subchapter.

(2) DHIN shall provide the mandatory reporting entity or voluntary reporting entity with an opportunity to comment on the data release request prior to its release.

~~Any~~ (3) Prior to the data release, DHIN shall review, consider, and respond to comments ~~received from that a~~
mandatory reporting entity or voluntary reporting entity submits during the comment ~~period shall be reviewed,~~
~~considered, and responded to by DHIN prior to the data release. period.~~

~~If a party requesting the release of data is identified by a mandatory reporting entity or voluntary reporting~~
~~entity~~ (4) If a mandatory reporting entity or voluntary reporting entity identifies a party requesting the release of data as
a potential competitor of the reporting entity, ~~the~~ DHIN shall limit disclosure of ~~any~~ pricing information that includes
postadjudicated claims data, to the fullest extent practicable and consistent with the purposes of this subchapter, to a
summary format that allows for analysis without revealing contracted pricing information.

~~If a party requesting the release of data is identified by a mandatory reporting entity or voluntary reporting~~
~~entity~~ (5) If a mandatory reporting entity or voluntary reporting entity identifies a person requesting the release of data
as a potential competitor of the reporting entity, ~~the~~ DHIN shall limit disclosure of ~~any~~ pricing information that
includes postadjudicated claims data, to the fullest extent practicable and consistent with the purposes of this
subchapter, to a summary format that allows for analysis without revealing contracted pricing information.

(f) The DHIN shall promulgate regulations to ensure confidentiality, privacy, and security protections of health-
care data and all other information ~~collected, stored, or released by DHIN, that DHIN collects, stores, or releases,~~ subject to
~~all~~ applicable state and federal health-care privacy, confidentiality, and data security laws.

Section 14. Amend § 10315, Title 16 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 10315. Funding ~~of the~~ Delaware Health Care Claims Database.

(a) ~~The~~ DHIN may not require any mandatory reporting entity, voluntary reporting entity, or provider to pay ~~any~~ a
cost or fee to submit or verify the accuracy of claims data or otherwise to enable the operation of the Delaware Health Care
Claims Database with respect to required claims data submissions.

(b) ~~The~~ DHIN may enter ~~contracts~~ a contract under § 10303(a)(11) of this title with ~~individuals and entities who~~
~~voluntarily subscribe~~ a person that voluntarily subscribes to access the database.

(c) ~~The~~ DHIN, with the assistance of the Department of Health and Social Services, shall develop short-term and
long-term funding strategies for the creation and operation of the Delaware Health Care Claims ~~Database that~~ Database.
The strategies may include any of the following:

~~public~~ (1) Public and private grant ~~funding,~~ funding.

~~subscriptions~~ (2) Subscriptions for access to data reports, access fees, and revenue for specific data projects,
subject to the limitations of this section.

462 Section 15. This Act takes effect on January 1 following its enactment into law.

463 Section 16. If Senate Bill No. 88 of the 151st General Assembly is enacted into law before January 1, 2023,
464 Section 8 of this Act does not take effect.

465 Section 17. If Senate Bill No. 119 is enacted into law before January 1, 2023, § 10312(3), Title 16 of Section 11 of
466 this Act does not take effect.

SYNOPSIS

This Act is the result of the 2019 report of the Joint Legislative Oversight and Sunset Committee's ("JLSOC") task force under Senate Resolution No. 9 of the 150th General Assembly, which recommended amending the Delaware Health Information Network's ("DHIN") chapter to conform existing law with the standards of the Delaware Legislative Drafting Manual. This Act makes technical corrections to the DHIN chapter, including the following:

- Using active voice where possible.
- Using the singular where appropriate since, under § 304 of Title 1, "words used in the singular include the plural."
- Converting block paragraphs into lists where possible, without changing the substance of the existing law, to enhance clarity and readability.
- Replacing "party" with "person" for consistency since, under § 302 of Title 1, "person" is defined as including "corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals."

This Act makes one substantive change to DHIN's chapter, in clarifying the circumstances under which the Governor may suspend or remove a member or otherwise consider a member as having resigned from the DHIN Board of Directors. Under this Act, the provision relating to suspension, removal, or resignation of a DHIN Board member is updated to be consistent with similar provisions for other boards.

Section 8 of this Act does not take effect if Senate Bill No. 88 of the 151st General Assembly is enacted into law before January 1, 2023, and § 10312(3), Title 16 of Section 11 of this Act does not take effect if Senate Bill No. 119 of the 151st General Assembly is enacted before January 1, 2023. Both SB 88 and SB 119 are also the result of JLOSC's review of DHIN, and both address substantive matters. The enactment of SB 88 or SB 119 override the technical corrections made in this Act, and the effective date clauses in Sections 15 and 16 of this Act reflect that policy.

This Act takes effective the January 1 after its enactment, to accommodate the enactment of the other bills currently pending before the 151st General Assembly relating to JLOSC's review of DHIN.

Author: Senator Gay